



Appeal Decision

Hearing held on 8 October 2024

Site visit made on 8 October 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2024

Appeal Ref: APP/F2605/W/24/3346657

Land to the west of South Pickenham Road, Swaffham PE37 8DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Ms V Lewis against the decision of Breckland Council.
 - The application Ref is 3PL/2023/1000/O.
 - The development proposed is outline permission for up to a total of 44 dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Ms V Lewis against the decision of Breckland Council, and a costs application was made by the Council against the appellant. These applications are the subject of separate decisions.

Preliminary Matters

3. The fourth reason for refusal, as set out on the Council's decision notice, concerned vehicular movements associated with the use of the proposed access and the potential for conflict and interference with the passage of through vehicles to the detriment of highway safety. The proposal included two potential junction options, updated through the Highways and Transportation Appeal Report June 2024. The Highways Statement of Case August 2024 (Highways SoC) was prepared by the local highway authority (LHA) acting as technical advisor to the Council and was submitted as part of the Council's evidence. Paragraph 8.5 of the Highways SoC confirms that it is likely that an acceptable detailed design for the vehicular access could be developed that would not result in a severe impact on highway safety, and has suggested conditions relating to the access design, including provision of a ghost island junction, and specifying visibility splay distances. Therefore, highway safety in respect of motor vehicle access does not form a main issue.
4. The appellant submitted an updated Ecological Assessment (Hopkins Ecology, June 2024), Shadow Habitats Regulations Assessment and Impact Assessment on SSSIs (Hopkins Ecology, June 2024), and an IACPC certificate countersigned by Natural England. Following review of those documents, and subject to suggested conditions to secure required mitigation measures, the Council confirms the sixth reason for refusal would fall away. Consequently, it is not necessary to consider this matter as a main issue.

5. During the appeal, a deed pursuant to section 106 of the Town and Country Planning Act 1990 as amended (hereafter 'the s106 agreement') was submitted. The s106 agreement was prepared in collaboration between the main parties, and the Council is satisfied it would overcome the seventh reason for refusal, which relates to the provision of affordable housing units, local infrastructure, and community facilities. I have considered the planning obligations against the statutory tests as 'Other Matters'.
6. In addition, a planning obligation by way of unilateral undertaking (UU) was submitted during the appeal relating to the provision of a pedestrian link. I have considered the UU in my reasoning below.
7. On 30 July 2024, government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Also on 30 July, the Secretary of State made a written ministerial statement (WMS) entitled "Building the homes we need". During the appeal, the parties were invited to consider whether the proposed reforms to the Framework and WMS are of relevance to the appeal proposal and I have had regard to the parties' written responses in my decision.

Main Issues

8. Having regard to the above, the main issues in this appeal are:
 - Whether the proposed development would be in a suitable location, having regard to the local development strategy;
 - The effect of the proposed development on the character and appearance of the area; and
 - Whether the proposed development would prioritise pedestrian and cycle movements.

Reasons

Whether in a suitable location

9. The site is an open area of grassland at the south of the market town of Swaffham. The site abuts existing built development to the west and north, and at its southern boundary adjoins an agricultural field. To the east, beyond South Pickenham Road lies open agricultural land. Since the site is undeveloped and is contiguous with agricultural fields, it comprises an area of countryside beyond the built edge of the town.
10. The site is outside the settlement boundary as demarcated on the Breckland Local Plan 2023 (BLP) Policies Map. Outside the defined settlement boundaries, BLP Policy GEN05 restricts development to recognise the intrinsic character and beauty of the countryside.
11. The proposed development would introduce built form across the site, including dwellings hardstanding, boundary treatments, and domestic paraphernalia. The development would have an urbanising effect on the site and would result in the loss of the open, undeveloped character of the countryside. The proposal would therefore fail to recognise the intrinsic character and beauty of the countryside.

12. However, Policy GEN05 indicates development outside the defined settlement boundaries will be acceptable where it is compliant with all relevant policies in the development plan. I have considered the proposal in respect of other development plan policies in the following sections.

Character and appearance

13. The site is an undeveloped field and whilst it abuts the built area, the site sits within a wider, open and undulating landscape comprised of agricultural land spanning either side of South Pickenham Road, which has a narrow, sinuous carriageway, flanked by grass verges and hedges.
14. The site is open to South Pickenham Road along its eastern boundary, and the southern boundary comprises a low hedge interspersed with gaps and occasional small trees, permitting views into the site from the highway.
15. The site's northern boundary abuts the long rear garden of the semi-detached dwellings which front onto South Pickenham Road. Looking north from the site's road frontage, the gable end of one dwelling is partly obscured by a tree and hedgerow within its garden. Whilst the main built area of Swaffham is situated to the north, this is generally obscured from view by vegetation.
16. The housing estates which lie to the west and north of the site are partly visible through gaps between trees and beyond the rear gardens of the dwellings to the north. However, the site's western and northern boundaries are more densely vegetated with mature trees and hedges, serving to partly screen and filter views of the modern housing development. The boundary vegetation is therefore an important landscape feature providing separation between the built area of the town and surrounding rural landscape. The site provides a soft, filtered, gateway on approaching the town from South Pickenham Road.
17. The site is not within a valued landscape subject to any formal designation. However, BLP Policy ENV05 requires development proposals have particular regard to maintaining the aesthetic and biodiversity qualities of features within the landscape, have regard to the findings of the Council's Landscape Character Assessment (LCA) and Settlement Fringe Landscape Assessment, and be designed to be sympathetic to landscape character.
18. The site is within The Brecks Landscape as identified within The Brecks Landscape Character Assessment 2013 and is in the Rolling Clay Farmland Character Area. The site's features and surrounds reflect sensitive landscape elements of the character area including hedged rural roads and long open views. The Settlement Fringe Landscape Assessment 2007 identifies the site as a small-scale field and indicates views towards the site as open and providing a key gateway on approach to the town. The site therefore has a green, open character which contributes to the rural landscape setting of the town on the approach from South Pickenham Road.
19. The proposal seeks outline planning permission, and the appearance of the proposed development is not currently before me. Layout, building heights, boundary treatments, and landscaping would comprise reserved matters, and therefore the visual impacts of the proposal cannot be fully quantified.
20. The indicative site layout plan provides one possible layout option. It includes a public open space near the eastern boundary, thereby setting most

development back from the highway. However, due to the site's rising topography, development would occupy an elevated position and would appear visually prominent in the landscape on approach from South Pickenham Road.

21. The proposal seeks up to 44 dwellings which, even if this maximum were provided, would result in a development of low density. However, through introducing built form, the proposed development would fundamentally change the site's countryside character to a suburban appearance.
22. The visual prominence of the site within the landscape is relatively localised, becoming visible on the approach to the town when travelling north along South Pickenham Road. Travelling south from the town, the appeal site enables wide open views across the open, countryside landscape. Whilst landscaping along the site boundaries could soften the appearance of the development, due to the gradient it would be unlikely to wholly screen it from view. Furthermore, any substantial boundary treatment would create enclosure and containment that does not presently exist.
23. The proposed development would be visible from the eastern end of Footpath 61 which spans the boundaries of fields south of the appeal site. However, Footpath 61 meets the carriageway of Brandon Road where there is no pedestrian footway or vehicle parking. The visual impact of development from Footpath 61 would therefore be diminished by the separation distance provided by interlaying fields, and by its limited practical use due to its isolation from the wider public rights of way network.
24. It is suggested the development would 'square off' this part of the town since there is development to the west and north. However, whilst the proposal would not project further south than the adjoining housing development, it would encroach eastward thus extending the built area to South Pickenham Road and southwards beyond the existing pair of semi-detached dwellings that front the road. It would result in the loss of an area of countryside that separates South Pickenham Road from the built form and have a harmful urbanising effect on this rural approach to the town.
25. As set out above, the development would be low density and viewed within the context of other modern development. Views of the development would be experienced principally from a relatively short section of South Pickenham Road and there would be opportunities through design, layout, soft landscaping, and screening to lessen the development's visual impacts. However, the proposal would have a harmful urbanising effect upon the site, would appear to encroach into the town's countryside landscape setting, and would be visually dominant on the approach to the town. For these reasons, the proposal would harm the character and appearance of the area.
26. The proposal would conflict with LP Policies GEN02, GEN05, and ENV05, which together require development respect and be sensitive to the character of the surrounding area, including landscape character, make a positive architectural and urban design contribution to its context and location, and respect the intrinsic character and beauty of the countryside.
27. The proposal would also conflict with Swaffham Neighbourhood Plan 2019 Policy HBE2, which requires new development not adversely impact on the appearance of the town and have regard to local context and seek to enhance the character and quality of Swaffham, and Policy HBE5 which encourages new

development located at town entrances enhance the visual approach or gateway to Swaffham.

Pedestrian and cycle movement

28. The site adjoins South Pickenham Road which has no footway, cycle infrastructure, or streetlighting, and therefore does not offer a safe, suitable route for pedestrians and cyclists of all abilities.
29. The proposal is accompanied by a UU containing planning obligations which require submission of a footway/cycleway scheme prior to making a reserved matters application. The footway/cycleway link would connect the site to Footpath 62 via adjacent garden land. Alternatively, the UU suggests the link could cross an adjoining area of public open space to meet the public highway at Bishy Barny Bee Gardens. Therefore, the appellant considers there to be two potential route options for the footway/cycleway link.
30. Footpath 62 lies to the north of the appeal site, beyond a long strip of garden land associated with dwelling 'Clarence Hills'. The owner of this neighbouring land is a signatory to the UU and would be bound by its planning obligations. Therefore, I am satisfied the UU would secure access to Footpath 62 across this neighbouring land.
31. Footpath 62 runs from South Pickenham Road and Brandon Road, between existing housing developments. It is a hard-surfaced route of modest width with streetlighting. A link from the appeal site across neighbouring land to Footpath 62 would provide connectivity with the town's pedestrian network.
32. However, Footpath 62 is not a shared use path and is designed for use only by pedestrians, with no provision for cyclists. Therefore, this footway/cycleway link option would lead cyclists from the appeal site to a pedestrian route where cycling is not appropriate.
33. Cyclists emerging from the neighbouring land would be required to dismount and walk along Footpath 62 before joining the streets serving the housing development on the northern side of the footpath. It is unclear how the requirement for cycles to dismount would be enforced.
34. Therefore, this footway/cycleway link option to Footpath 62 would fail to provide convenient, unencumbered access for cyclists, and would create opportunity for conflict to occur between pedestrians and cyclists.
35. Bishy Barny Bee Gardens is a short distance west of the appeal site, separated from the site boundary by an area of open space comprised of trees and grassed amenity land between dwellings and a pond. The eastern end of Bishy Barny Bee Gardens is a shared surface residential road and to the west comprises a carriageway and footway. There are streetlights and a 20mph speed limit across the estate which connects to Brandon Road, which offers a shared path for pedestrians and cycle travel toward the town centre. Therefore, a footway/cycleway link from the appeal site to Bishy Barny Bee Gardens would provide connectivity to the wider pedestrian and cycle network.
36. However, the area of open space is understood to be in the ownership of the developer of the adjoining housing estate. An ongoing dispute regarding the discharge of conditions has prevented the transfer of the open space to the Council. I have been provided no evidence to suggest the transfer of land will

occur in the short or medium term. The area of open space is beyond the site boundary and outside the appellant's control. The owner of the open space is not a signatory to the UU and is not bound by its obligations. Therefore, the UU does not provide certainty that a footway/cycleway link to Bishy Barny Bee Gardens would be achieved.

37. The appellant suggests the speed limit at South Pickenham Road would be reduced to 40mph to provide an alternative route for cyclists. During the hearing, the LHA's officer expressed support for a speed limit reduction. However, I have been provided no details of any mechanism by which this speed limit change would be secured. Moreover, the submitted information, including the Highways and Transportation Appeal Report, does not suggest streetlighting would be provided along South Pickenham Road, and therefore fails to demonstrate this alternative route would be of a safe and suitable standard for cyclists.
38. At paragraphs 96, the Framework requires development enable and support healthy lifestyles through layouts that encourage walking and cycling, and at paragraph 116 requires priority be given first to pedestrian and cycle movements, both within the scheme and with neighbouring areas. At paragraph 114, the Framework requires development ensure appropriate opportunities to promote sustainable transport modes are taken up, with safe and suitable access to the site for all users and requires the design of streets and other transport elements reflect national guidance, including the National Design Guide and the National Model Design Code. At M2, the National Design Guide requires priority be given to pedestrian and cycle movements, and advises this means creating routes that are safe, direct, convenient, and accessible for people of all abilities.
39. Paragraph 115 of the Framework requires development only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Within this context, the LHA considers that failure of a major residential development to provide maximise opportunity to travel by sustainable modes would amount to severe residual cumulative impacts.
40. As set out above, the UU would secure suitable pedestrian connectivity across neighbouring land. However, the proposal would not provide safe, convenient access for cyclists and would fail to prioritise cycle movements.
41. The proposal would conflict with BLP Policy GEN02, which requires development maximise connectivity within and through a development and to the surrounding areas, including the provision of high quality and safe cycle routes. In addition, the proposal would not comply with BLP Policies TR01 and TR02, which encourage both walking and cycling to secure healthy lifestyles and reduce carbon emissions, and requires development to provide safe, suitable and convenient access for all users.
42. The proposal would also conflict with Policy TRA2 of the Swaffham Neighbourhood Plan which requires new residential development incorporate opportunities for walking and cycling, and that new footpaths and cycle ways connect to town services, existing routes and the surrounding area, and form part of a coherent network to encourage alternatives to use of private cars.

Other Matters

Whether planning obligations would secure the provision of affordable housing, self-build units, open space, community facilities, and infrastructure

43. The seventh reason for refusal set out on the decision notice concerns the absence of a legal agreement to secure the provision of affordable housing; self-build units; public open space, children's play and outdoor sport space; to mitigate the impacts of the development on healthcare provision in the local area and the impact on community facilities including education and libraries. As discussed above, the s106 agreement contains planning obligations relevant to these matters and would come into effect if planning permission were granted. I have considered these within the context of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and as set out in paragraph 57 of the Framework. These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
44. BLP Policy HOU07 requires the proposal include on-site affordable housing provision equivalent to 25% of the proposed development, with a tenure split of 70:30 rented to shared ownership/intermediate. The planning obligations at schedule 1 of the s106 agreement would ensure the proposal fulfils the requirements of Policy HOU07, and thus would be necessary to ensure the development would contribute to meeting the area's affordable housing needs.
45. BLP Policy ENV04 requires development provide on-site outdoor playing space provision equivalent to 25.6m² per person, of an appropriate type and giving priority to the provision of children's play areas, and with a contribution toward maintenance. The obligations at schedule 2 of the s106 agreement would secure open space provision in accordance with Policy ENV04.
46. Norfolk County Council's Evidence in Support of Infrastructure Requirements relating to Education, Library, and Fire Hydrant Provision, identifies that new housing development increases pressure on such infrastructure, The County Council has calculated financial contributions toward education and libraries, and associated monitoring costs, in accordance with its Planning Obligations Standards, and taking into account available infrastructure capacity. Schedules 3 and 4 of the s106 agreement provided obligations in accordance with the County Council's requested contributions.
47. The Norfolk and Waveney Integrated Care System (ICS) Strategic Estates identifies the additional population associated with the development would increase demand for services of local GP practices, acute healthcare, mental healthcare, community healthcare and the ambulance service operating within the area. The s106 agreement includes a planning obligation to secure a healthcare contribution, the value of which reflects the ICS's request which was calculated using a nationally recognised tool and would be used to fund for the provision of any extra healthcare capacity within the vicinity of the site. I am therefore satisfied the planning obligation is necessary to meet the healthcare needs of future occupants.
48. The above planning obligations would comply with the Framework's tests, and the s106 agreement therefore provides a suitable mechanism to secure

provision of affordable housing, open space, community facilities, and infrastructure.

49. The appellant has expressed an aspiration to provide five plots for self-build and custom housebuilding (SBCH). However, this is not included within the development description and the s106 agreement does not secure provision of SBCH plots. In the absence of any mechanism to secure SBCH, I cannot consider the delivery of SBCH plots a benefit of the scheme.
50. Whilst reason for refusal seven refers to the absence of a legal agreement to provide for the delivery of self-build units, the development plan contains no policy requirement for on-site provision of SBCH plots. Therefore, the absence of such an obligation would not result in conflict with the development plan.

Integrity of European sites

51. The appeal site is within the zone of influence (ZOI) of sites identified within the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS). Natural England indicate the site has the potential to have adverse effects on European sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations) including the Breckland Special Protection Area (SPA), Breckland Special Area of Conservation (SAC), and Norfolk Valley Fens SAC. Where a proposal is likely to have significant effects on European Sites, Regulation 63 of the Habitats Regulations requires the competent authority carry out an Appropriate Assessment (AA). However, AA is only necessary where the competent authority is minded to grant consent for the proposal. Since I am dismissing the appeal due to other identified harms, it is not necessary to subject the proposal to AA.
52. The GIRAMS advises that increased housing growth places additional recreational pressure on European Sites. The development would provide an uplift in population within the ZOI and the s106 agreement secures a financial contribution toward mitigation measures identified by the GIRAMS. Since, the GIRAMS represents a strategic approach to mitigation by several councils across the wider area and is endorsed by Natural England, I am satisfied that the planning obligation would comply with the statutory tests.

Council's housing land supply position

53. The BLP was adopted in 2019 and subject to a partial update in 2023. The Council therefore considers the LP will reach its fifth anniversary on 29 November 2024. At time of my decision, the plan is less than five-years old. As the BLP is less than 5 years old, paragraph 77 of the Framework requires supply be demonstrated against the housing requirement set out in adopted strategic policies.
54. Policy INF03 requires the Council undertake a full review of the BLP and submit for examination by December 2024. In a recent appeal decision¹, the Inspector considered the anticipated delay to the Local Plan review and found the policies most relevant to this appeal are not out of date by virtue of the current timetable for submitting the Local Plan Review. The Council accepts the target date for submission will not be met, with further delay anticipated. Nonetheless, the policy is not triggered at time of my decision which precedes

¹ APP/F2605/W/24/3336631

the target date set out in Policy INF03. Furthermore, the Framework provides clear guidance for the decision-maker where the strategic policies are more than five years old.

55. LP Policies HOU03 and HOU04 require development not significantly exceed the housing requirement for service centres, and not significantly increase the number of dwellings beyond 5% in certain villages, thus implying a cap on development in some settlements. However, the table on p43-44 of the appellant's statement provides a comparison of dwelling commitments and completions against the HOU04's target and shows the 5% cap has been significantly exceeded in many settlements. Therefore, there is no evidence that those policies are acting as an overall constraint to growth, and paragraph 225 of the Framework requires due weight be given to existing policies according to their degree of consistency with the Framework.
56. Natural England identifies that development proposals within some parts of the Council's area have the potential to affect water quality in such a way that adverse nutrient impacts on designated habitats sites cannot be ruled out. Within affected catchments, Natural England identify that mitigation through nutrient neutrality (NN) offers a potential solution. Within the district, the geographic area where nutrient pollution may affect designated sites includes one market town, six local service centres, and four villages with settlement boundaries. The Council has provided a summary of nutrient mitigation measures available or being developed within the area, including credit schemes, faster-tracked upgrades to wastewater treatment works, retrofitting of water efficiency measures, septic tank upgrades, removal of land from agricultural production, regenerative soil-improvers for arable farming, retention ponds, and on-site wastewater treatment schemes.
57. However, it is unclear whether such schemes offer sufficient capacity and certainty to mitigate the specific nutrient impacts of individual developments to the satisfaction of Natural England. In addition, no information of the effects of NN on development viability have been provided. Therefore, NN may be a constraint to development within the relevant catchment. In considering the Council's land supply position, below, I have had regard to whether NN mitigation has been secured.
58. The Breckland Council Statement of Five-Year Housing Land Supply July 2023 (5YLSS) sets out the Council's residential land supply position at 31 March 2023. More than one year has elapsed since the 5YLSS's publication and its data is somewhat aged. The Council suggest it will publish an updated statement to coincide with the fifth anniversary of the BLP, thereby providing an annual update of its supply of specific deliverable sites. The 5YLSS therefore provides the most recent assessment of housing land supply available at the time of the appeal, and it is necessary to consider the housing land supply position as at the 5YLSS's base date.
59. Since the application was made prior to the revisions to the Framework in December 2023, the Council would not benefit from the exemption at paragraph 76 of the Framework. The Council's statement provides recent information on sites challenged by the appellant, and the Council has set out its position regarding adjustments to be made to its housing supply. Therefore, I am satisfied the update to its evidence provided by the Council for the purposes of the appeal is proportionate.

60. Row F of Table 6 of the 5YLSS identifies a housing requirement of 3,523 dwellings over the five-year period. This is calculated from the LP's annual dwelling requirement, adjusted to account for a past shortfall in delivery, and also includes a 5% buffer to provide choice and competition in the market. Through inclusion of a buffer, the 5YLSS's housing requirement exceeds the housing requirement identified by the LP.
61. Rows H to L of Table 6 of the 5YLSS identifies dwelling supply over the five-year period by site type. The appellant disputes this supply, namely whether certain sites are deliverable. The total supply figure is artificially suppressed through application of a 10% lapse rate assumption for minor development (row I), and a 25% discount to account for uncertainty in the delivery of Local Plan allocations with undetermined planning applications (row J). Therefore, an assumption that some sites will fail to deliver dwelling completions in the five-year period is factored into the housing land supply calculation.

Sites to be omitted from the housing supply calculation

62. The following sites with outline planning permission for major development lack clear evidence that housing completions will begin on site within five years and are not deemed to be deliverable:
- Thetford SUE: The Council's estimate of delivery is based on a trajectory of draft assumptions provided by the land promoter, dated February 2023. Key infrastructure has recently been constructed, and the Council expects this phase to be constructed once other phases across the wider site are completed. I have no evidence of the progress of those other phases, and there is no reserved matters application for this phase of the development.
 - Land south of Chapel Street, Shipdham²: a reserved matters application is pending determination subject to resolution of NN constraints. However, it is not demonstrated that nutrient mitigation will be secured for the site.
 - Attleborough SUE: The scheme is led by Homes England, and the Council has approved a Design Code, Structuring Plan, a s73 application for a link road, and various site-wide s106 strategies. Other s106 strategies and a planning application for a pumping station and electricity sub-station are pending determination. However, I have no evidence to provide certainty for the estimated 300 dwelling completions within the five-year period.
63. Detailed planning permission at Land east of The Beeches, Weeting³; and Fruehauf, South Green⁴ has lapsed. These sites are not deemed to be deliverable within the five-year period and should be omitted from the land supply calculation.
64. The following sites do not involve major development and are not deemed to be deliverable within the five-year period:
- Clayland House, 1 Norwich Road, Watton⁵ is a house in multiple occupation, not a C3 dwelling;

² LPA ref: 3PL/2019/1056/O

³ LPA ref: 3PL/2016/1412/D

⁴ LPA ref: 3PL/2019/1556/F

⁵ LPA ref: 3PL/2023/00311/F

- Sites where planning permission is known to have lapsed⁶;
- Ancillary accommodation not resulting in a net gain in dwellings⁷;

65. The following sites allocated in the development plan are not deemed to be deliverable within the five-year period:

- Shipdham Housing Allocation 3: planning permission has lapsed, and whilst a new application is pending determination, no evidence has been provided to demonstrate NN will be secured;
- Swaffham Housing Allocation 5: the Council has resolved to approve the planning application subject to completion of a s106 agreement. However, I have been provided with no evidence on the matters preventing the agreement's completion or any timetable for its resolution.
- Hockering Housing Allocation: there is no planning application for the site and no evidence of delivery.

Sites/supply to be retained in the calculation

66. The total supply figure includes an allowance of 300 windfall dwellings, based on an assumption of 100 dwellings per annum in years 3 to 5. Appendix 4 of the 5YLSS shows the district has an average annual windfall delivery of 458 dwellings. I am satisfied that, even taking into account the potential for NN to constrain delivery in affected areas of the district, the windfall allowance is a highly conservative estimate when compared to annual average data and would likely be exceeded.

67. The following sites have detailed planning permission with no evidence of constraints to delivery, and are therefore deemed to be deliverable:

- Mattishall site⁸ and Brookside Farm, 74 Holt Road, North Elmham⁹ are under construction;
- Certificate of lawfulness for permanent siting of caravans at Brick Kiln, Ashill¹⁰, not previously counted in Council's dwelling completion figures;
- Land off Elm Close, Yaxham¹¹.

68. The following sites do not involve major development and have planning permission and are therefore deemed to be deliverable:

- Sites with planning permission for minor development at the base date which the appellant considers to now be lapsed¹². However, no evidence has been provided to confirm permissions have lapsed.
- Other sites with planning permission for minor development, with no clear evidence that homes will not be delivered within five-year period¹³.

⁶ LPA refs: 3PL/2019/1472/F; 3PL/2018/0740/F; 3PL/2019/0174/F; 3PL/2017/1087/F; 3PL/2020/0160/O; 3PN/2019/0036/UC; 3PL/2019/0349/F.

⁷ 3PL/2022/1089/F

⁸ LPA ref: 2019/0849/D

⁹ LPA ref: 3PL/2019/0874/F

¹⁰ LPA ref: 3PL/2022/0574/UU

¹¹ LPA ref: 3PL/2018/0021/D

¹² LPA ref: 3PL/2020/0091/F; 3PL/2020/1331/F; 3PL/2020/0540/F; 3PL/2020/0196/F; 3PL/2020/0579/F; 3PN/2020/0005/UC; 3PL/2020/1215PIP; 3PN/2020/0024/UC; 3PL/2020/0046/O.

¹³ LPA ref: 3PL/2020/0157/PIP; 3PL/2021/0687/PIP; 3PL/2020/0821/D; 3PL/2022/0105/F.

- Sites with outline permission for minor development with no clear evidence that homes will not be delivered within five-year period¹⁴.
69. In addition, Dereham Housing Allocation 3 has detailed planning permission and is under construction¹⁵. However, a planning condition permits only 107 dwellings be constructed prior to planned upgrades to the Dereham Water Treatment Plant. In the absence of evidence to demonstrate the upgrades will occur in 2025 as planned, only the first 107 dwellings should be included in the housing supply calculation.
70. A planning application for Swaffham Housing Allocation 1 is pending determination and is scheduled to be considered at a forthcoming planning committee with a recommendation for approval. The principle of development is established by the allocation by the LP, the scheme is developer-led by a housing association and is not subject to NN constraints. Therefore, there is clear evidence the site is progressing toward delivery. However, due to the site's current planning status, the delivery rate should be pushed back one year from the assumption in the 5YLSS. Therefore, the site trajectory should be adjusted by -11 dwellings, to 40 dwellings within the five-year period.

Revised housing land supply calculation

71. As set out above, based upon the evidence available during the appeal, certain sites are not deemed to be deliverable within the context of the Framework's definition and should be omitted from the housing land supply calculation, or expectations of delivery should be reduced. However, it is necessary to also have regard to the discounts applied at rows I and J of table 6 of the 5YLSS to avoid double counting assumptions of lapse rates and potential delays to delivery of housing allocations.
72. Based on the findings above, the values in table 6 of the 5YLSS should be amended or retained as follows:
- *Row H - Major sites with Planning Permission:* To omit sites which do not meet the Framework's definition of 'deliverable' an adjustment of -909 dwellings should be applied, providing a revised total of 2,631 dwellings.
 - *Row I – Minor sites with Planning Permission:* Appendix 3 of the 5YLSS provides a trajectory of minor sites with planning permission and identifies a supply of 602 remaining dwellings. Sites which do not involve major development and are not deliverable account for 23 dwellings. This is equivalent to approximately 4% of the 5YLSS supply from minor sites, and is therefore significantly below the 10% discount applied to supply from minor development at Row I. Therefore, there is no reasonable justification to adjust the Row I 'Minor sites with Planning Permission' supply figure, and the 542 dwelling estimate should be retained.
 - *Row J – Local Plan allocations with undetermined planning applications:* Appendix 5 of the 5YLSS identifies a total supply of 418 dwellings from local plan allocations without planning permission. From the assessment above, the figure should be adjusted by -210 dwellings. This significantly

¹⁴ LPA ref: 3PL/2021/1010/O; 3PL/2023/0065/O; 3PL/2021/1311/O; 3PL/2018/0694/O; 3PL/2018/0698/O; 3PL/2021/1422/O; 3PL/2020/1265/O; 3PL/2022/0706/O; 3PL/2021/0631/O; 3PL/2020/1356/O; 3PL/2021/1564/O; 3PL/2021/0097/O; 3PL/2020/0160/O; 3PL/2020/0737/O.

¹⁵ LPA ref: 3PL/2022/1050/D

exceeds the 25% discount rate. Therefore, the Row J supply figure should be revised to 208 dwellings. Since I have included sites only where the Framework's definition of deliverable would be met, there is no compelling evidence to provide a further discount beyond the adjustments applied.

- *Row K – Windfall:* As set out above, the windfall assumption is supported by evidence of past delivery. The 300-dwelling estimate should therefore be retained.
- *Row L – Total Supply:* Based on the above adjustments, the total supply figure should be revised to 3,681 dwellings.
- *Row M – 5 Year Housing Supply (5% buffer):* Based on the LP housing requirement, which includes past shortfall and applies a discretionary 5% buffer, the revised housing supply would be equivalent to 5.22 years.

73. The adjustments to table 6 of the 5YLSS significantly reduce the supply of sites deemed to be deliverable within the five-year period. However, the total supply would exceed the total five-year requirement. Consequently, I am satisfied that a demonstrable five-year supply of housing land exists. The provisions of paragraph 11(d) of the Framework are not therefore engaged.

74. As set out above, I have found the Council's evidence for the delivery of certain sites does not meet the Framework's definition of 'deliverable'. For the purposes of assessing whether a sufficient supply of housing land exists, I have concluded such sites should be omitted. My findings reflect the evidence available during the appeal and are not intended as an authoritative assessment by which to bind future decision-makers.

Written Ministerial Statement and Draft National Planning Policy Framework

75. The WMS sets out government's major steps to addressing the national housing crisis, including through raising housing targets, and is capable of being a material consideration in decision-making. The proposed reforms to the Framework remain in draft form at time of my decision, and thus only limited weight can be afforded to its proposed changes. Nonetheless, the draft Framework proposes the requirement to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, where those policies are less than five years old, be retained. Therefore, the WMS and draft NPPF do not indicate a decision should be taken other than in accordance with the development plan.

Other relevant decisions

76. The Council has resolved to grant planning permission for 150 dwellings subject to approval of a s106 legal agreement at land to the west of Sporle Road, Swaffham¹⁶. The appellant alleges inconsistency in the Council's decision-making at these two schemes. However, the Sporle Road site is within the settlement boundary and is allocated for development by the BLP, whereas the appeal site is outside the boundary and is not allocated, and therefore the planning status of these sites are materially different.

77. In addition, the appellant notes the LHA indicates the highway mitigation package does not fully accord with its recommendations, including linking the

¹⁶ LPA ref: 3PL/2023/0441/F

proposed footway/cycleway into Town Council land. I do not have details of the highway mitigation measures for the scheme. Moreover, I have determined the appeal against the policies of the development plan, taking into account evidence provided by the parties and other stakeholders, including the LHA.

Other considerations

78. The proposal would be major residential development and would contribute to the supply of housing in the area. Notably, this would include the provision of affordable housing, for which there is understood to be a significant need. There would be economic benefits associated with the construction and occupation of the dwellings, and social benefits through providing additional footfall and financial contributions to maintain local services and community facilities. However, I have found there is not a shortfall in the area's supply and there is a realistic prospect that similar benefits would arise through development of other deliverable sites identified by the development plan. Therefore, such other considerations do not suggest a decision should be taken other than in accordance with the development plan.

Conclusion

79. As set out above, the site lies beyond Swaffham's settlement boundary. BLP Policy GEN05 indicates development outside settlement boundaries will be acceptable where it is compliant with all relevant policies in the development plan. As discussed above, the proposed development would harm the character and appearance of the area and would not provide a suitable standard of accessibility for cyclists, resulting in conflict with development plan policies. Consequently, the harm to the intrinsic character and beauty of the countryside is not justified.
80. S38(6) of the Act requires I determine the appeal in accordance with the development plan unless material considerations indicate otherwise. I have found the provisions of Framework paragraph 11(d) are not engaged and the other considerations of the scheme do not indicate a decision should be taken other than in accordance with the development plan.
81. The proposal would conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

E Dade

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

- Jason Parker, Director & Head of Planning, Parker Planning Services
- David Parker MCIPS, Consultant and Associate Land Promoter for Meadows Services Ltd
- Josh Bodiam, Graduate Planner from Parker Planning Services

FOR THE LOCAL PLANNING AUTHORITY:

- Barbara Greengrass BSc (Hons), MSc MRTPI, Principal D M Planner, Breckland Council
- Chris Hobson BSc, MSc, MA MRTPI, Principal D M Planner, Breckland Council
- Rachel Gibbs BSc (Hons), PGDip, MSc MRTPI, Senior Planning Policy Officer, Breckland Council
- Andrew D'Arcy MRTPI BA (Hons), Principal Planning Officer, Breckland Council
- Andrew Willeard, Engineer (Estate & Major Development), Norfolk County Council (Highways)
- Chris Fitzgerald, Technical Support Officer, Breckland Council
- James Faulkner, Apprentice Planning Policy Officer, Breckland Council
- Lucy Gaffer, Planning Officer, Breckland Council